

REMARKS

The September 1, 2005 non-final Office Action has been reviewed and its content carefully noted. Favorable reconsideration of this case is respectfully requested. Claims 1-5 are pending in this application and are currently rejected.

Applicant has amended claims 1 through 5 to further clarify the present invention. Support for these amendments may be found *inter alia* in the specification on page 2, lines 10-14, page 3, line 21; page 4, line 1 and page 5, lines 2-4. Reconsideration of the application is respectfully requested.

**Claim Rejections – 35 U.S.C. §102**

**US 4,432,455 to Savoir**

The Examiner has rejected claims 1, 2, 4 and 5 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,432,455 to Savoir (“Savoir”).

In response to the Examiner’s rejection, Applicant respectfully points out the standard for anticipation as set forth in MPEP §2131:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegaal Bros.v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as contained in the ... claim. Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

In view of the above, Applicant respectfully traverses the rejection as being improper. The amended claims of the present invention are not anticipated by Savoir because Savoir does not disclose each and every element as set forth in the claims. Claim 1 has been amended to recite that powdered tea or other powdered substances are disposed within a vacuum packed

packet device for mixing with contents of the beverage container for subsequent consumption. Savoir does not disclose, teach or suggest powdered tea or other powdered substances disposed within a vacuum packed packet device. Instead, Savoir discloses packaging for tablets, capsules, pills or the like, constituted by a disc provided with cut-out portions in which or on which the tablets or the like are held. (Col. 1, lines 5-10). The package is provided with an opening intended for the introduction of the disc onto the neck of a bottle or container. (Col. 1, lines 18-22). Because Savoir does not disclose, teach or suggest the use of a vacuum packed packet device, the Examiner's rejection is improper and should be withdrawn.

#### **Claim Rejections – 35 U.S.C. §103**

##### **US 4,432,455 to Savoir in view of US 2004/0007490 to Bowman et al.**

The Examiner has rejected claim 3 under 35 U.S.C. §103(a) as being unpatentable over Savoir in view of US Published Application No. US2004/0007490 to Bowman et al. ("Bowman") stating that it would be obvious to modify Savoir and employ a leaf shaped package.

Applicant respectfully traverses the Examiner's rejection as being improper in view of MPEP §2143 providing:

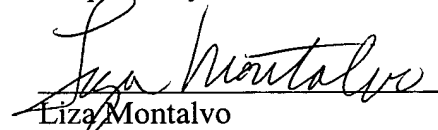
To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Applicant respectfully submits that a *prima facie* case of obviousness has not been set forth because the office action fails to provide any teaching or suggestion of all the limitations of

amended claim 3. Savoir teaches packaging for tablets, capsules, pills or the like, constituted by a disc provided with cut-out portions in which or on which the tablets or the like are held. (Col. 1, lines 5-10). The package is provided with an opening intended for the introduction of the disc onto the neck of a bottle or container. (Col. 1, lines 18-22). Bowman teaches packaging for storing and dispensing small servings of condiments where the package can be shaped as a biological analog of the condiment. (Page 1, ¶0009). However, neither Savoir or Bowman teach or suggest the vacuum packed packet device of claim 1, from which amended claim 3 depends. Because the cited reference fails to teach or suggest all the limitations of amended claim 3, the rejection is improper and should be withdrawn.

Applicant respectfully submits that this application is in condition for allowance. Early and favorable action is earnestly solicited. If any additional fee is due, the amount of such fee may be charged to Deposit Account No. 50-1145.

Respectfully submitted,



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